



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 14 1995

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Supplementary Guidance on the Use of ASTM Emergency Standard ES 40-94

FROM: Lisa C. Lund, Acting Director
Office of Underground Storage Tanks

TO: State UST Contacts
UST/LUST Regional Program Managers

This memorandum provides further guidance on the use of American Society of Testing and Materials (ASTM) Emergency Standard ES 40-94 and builds on our guidance of May 18, 1995 (attached). Two issues are addressed. The first issue is manual tank gauging. The second is concern about differences between the May 18th memo and previously circulated drafts. Our purpose here is to clarify our position on these topics and to provide implementing agency officials with additional information on this rather complex issue.

Regarding the first issue, a question has been raised on how manual tank gauging fits into our May 18, 1995 guidance. Manual tank gauging, performed according to 40 CFR 280.43(b), does qualify as a monthly leak detection method for tanks with capacities up to and including 550 gallons. (With additional restrictions, it also can be used on tanks up to and including 1000 gallons, under 280.43(h)¹.) Therefore, although its use may be rare, manual tank gauging is included in the list of acceptable leak detection methods in our guidance.

Regarding the second issue, in drafts of November 15, 1994 and February 3, 1995, we stated that OUST "believes that, when used in combination: 1) the implementation of procedures in ASTM Emergency Standard ES 40-94, and; 2) [certain leak detection procedures] constitute a method that is no less protective of human health and the environment than the methods listed in 280.21(b)(2)(i) through (iii)...." Furthermore, the drafts stated that we recommend that UST program implementing agencies make such a "no less protective" determination.

¹ See booklet *Manual Tank Gauging: For Small Underground Storage Tanks*, EPA 510-B-93-005.

In the final guidance of May 18, we made the same recommendation, reworded slightly to match the regulatory language. However, the final did not contain a statement that EPA or OUST believes that the combination was as protective.

First, we acknowledge that there has been some confusion on this issue, and apologize for any inconvenience that the changes may have caused. We made multiple changes as we attempted to incorporate comments which made our guidance both clearer and legally correct. We certainly did not anticipate that this particular change would alter the way the guidance was viewed.

Second, please be assured that we would not recommend that implementing agencies make a determination under the federal UST regulations if we did not ourselves believe that it was a worthwhile option, based on the best available technical information.

EPA does believe that in general the combination of ES 40-94 and monthly leak detection per either 280.43(b) or 280.43(d) through (h) prevents releases in a manner that is no less protective of human health and the environment than the methods listed in 40 CFR 280.21(b)(2)(i) through (iii). Therefore, EPA recommends that implementing agencies accept this combination as no less protective. We acknowledge that there are variables among jurisdictions, including soil characteristics and availability of technical expertise. The Agency recognizes that implementing agencies may choose to be more stringent than EPA. Thus, state and local implementing agencies may make the final decision on this issue. In situations when EPA is the implementing agency, e.g., on tribal lands, EPA Regions are hereby guided to accept this combination as preventing releases in a manner that is no less protective.

As you know, for the vast majority of regulated USTs, EPA is not the primary implementing agency, but rather a resource for other implementing agencies. There are several sections in the UST regulations when the implementing agency may make a determination that an alternative method or time frame is no less protective. One is 280.21(b)(2)(iv), which allows an implementing agency to determine that an alternative method of ensuring integrity is no less protective.

Why doesn't EPA make a "no less protective" determination itself? During review of comments on the guidance drafts, it became clear that for programmatic and legal reasons, and because of the need to issue guidance in a timely manner, the best option was not for EPA itself to make a determination under 280.21(b)(2)(iv) for any class of USTs, whether it is or is not the implementing agency. We estimate that it would take the Agency over a year to issue such a formal determination, by which time the Emergency Standard would be near expiration. The preamble to the final rule's discussion about leak detection methods is relevant to this subject, and supports the option we chose.

"The Agency is convinced ... that allowing approval by the implementing agency, including those at the state and local level, will enable a new method to be used more quickly because the implementing agencies would not have to wait for a Federal approval before a method could be implemented. In addition, the precedent set when a new method passes

an evaluation in one implementing agency should facilitate succeeding reviews by other agencies." (53 Fed. Reg. 37165)

I hope that this information helps you make decisions that are right for your program regarding this issue. If you have any questions about this matter, please call Randy Nelson of EPA Region 7 at (913) 551-7220, or David Wiley of OUST at (703) 308-8877.

Attachment (without Discussion Paper)

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